



In her application/complaint, plaintiff says the following:

Jefferson County terminated me improperly in a manner contrary to their policy and procedure for employees - pending termination but under medical care. I should not have been terminated during the period I was being psychologically evaluated. I had been advised by my doctor not to return to work, however, Marsha Allen of Internal Affairs at Jefferson County instructed me to report. When I reported I was terminated.

Application, pp. 4,5.

Little more than thirty days after Judge Acker's first order, the judge dismissed plaintiff's complaint for want of prosecution.

In the interim, plaintiff obtained the services of her present lawyers. Plaintiff did not reveal to her lawyers the pendency of her action in Judge Acker's court. Her lawyers filed the present action on February 27, 1996.

On March 19, 1996, plaintiff's counsel filed in this case a "Motion to Set Aside Order of Dismissal and Motion to Reinstate." That motion was directed to Judge Acker. Less than ten days later, Judge Acker denied the Motion to Set Aside. He specifically noted that neither the plaintiff nor he her counsel briefed the motion or appeared in court to argue in its support. There was no appeal from Judge Acker's March 28 order.

In the present action, the named defendants are the State of Alabama; Mel Bailey, individually and officially in his capacity as the Sheriff of Jefferson County, Alabama; Lieutenant Sam Green, individually; and Sergeant Marsha Allen, individually. Plaintiff complains of racial discrimination (including discharge), disability discrimination, and a violation of the Family and Medical Leave Act of 1993. She also makes state law claims of slander, libel, invasion of privacy, and outrageous conduct.

## II

The doctrine of *res judicata* applies where four conditions are satisfied. Where there is a final judgment on the merits, rendered by a court of competent jurisdiction, identical parties, and identical causes of action, a subsequent action is barred. *Jaffree v. Wallace*, 837 F.2d 1461, 1466 (11th Cir. 1988).

Where a dismissal for want of prosecution does not explicitly state that the dismissal is without prejudice, the dismissal operates as an adjudication on the merits. Fed.R.Civ.P. 41(b).

## III

Based on the undisputed facts, all of the requirements for *res judicata* are met in this case.

Accordingly, by separate order, defendants' motion for summary judgment shall be granted.

DONE this 26<sup>th</sup> day of September, 1997.

A handwritten signature in cursive script, appearing to read "U. W. Clemon", written over a horizontal line.

UNITED STATES DISTRICT JUDGE  
U. W. CLEMON